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September 22, 2021

VIA ECF

Magistrate Judge Sanket J. Bulsara
United States District Court
Eastern District of New York
225 Cadman Plaza East Chambers 304N
Brooklyn, New York 11201

Re: Rodea v. New York Diner, Inc., *et ano.*
Case No.: 1:21-cv-217 (ERK) (SJB)
Plaintiff's Response in Opposition to Defendants' Letter Motion to Compel

Dear Judge Bulsara:

This office represents the Plaintiff Jose Eduardo Rodea (hereinafter "Plaintiff") in the above-referenced case. Plaintiff writes in response to Defendants' letter motion to compel. For the reasons set forth below, this Court should deny Defendants' letter motion.

By way of background, this is a run-of-the-mill wage-and-hour case where Defendants inappropriately paid Plaintiff a fixed salary regardless of the number of hours he worked. As this honorable Court well knows, the employer is mandated by law to keep accurate pay and time records and the Plaintiff is not required to keep any such records. In fact, pursuant to half-a-century-old Supreme Court precedent, where an employer fails to keep records as required by law, an employee is entitled to rely on his recollection as to the number of hours he worked. See Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946).

With the foregoing in mind, Defendants have set off on some principled yet pointless mission to have Plaintiff withdraw his objections to their discovery demands despite the fact that Plaintiff has either produced the requested discovery or unequivocally stated that he is not in possession, custody, or control of any responsive, non-privileged documents. To that end, Defendants' letter motion must be denied as moot. Here, nothing is to be gained from ordering Plaintiff to revise his formal responses to discovery demands. Further, contrary to Defendants' allusion, Plaintiff provided Defendants with a signed verification to his responses and objections to their interrogatories on September 1, 2021.

Accordingly, Defendants' letter motion must be denied as moot. Plaintiff thanks Your Honor for its time and attention to this case.

Dated: Forest Hills, New York
September 22, 2021

Regards,

SHALOM LAW, PLLC

/s/ Jonathan Shalom

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